

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NINA FRENCH,

11 Plaintiff,

12 v.

13 WASHINGTON STATE
14 DEPARTMENT OF HEALTH, et al.,

15 Defendants.

CASE NO. C15-0859JLR

ORDER GRANTING MOTION
FOR RECONSIDERATION AND
VACATING JUDGMENT

16 **I. INTRODUCTION**

17 Before the court is Plaintiff Nina French's motion for reconsideration of the
18 court's February 13, 2017, order of dismissal and judgment. (MFR (Dkt. ## 35, 36);
19 2/13/17 Order (Dkt. # 33); Judgment (Dkt. # 34).) The court has considered Ms.
20 French's motion, Defendant Washington State Department of Health's ("the DOH")
21 response to the motion (MFR Resp. (Dkt. # 38)), the relevant portions of the record, and
22 //

1 the applicable law. Being fully advised,¹ the court GRANTS Ms. French's motion for
2 reconsideration for the reasons set forth below.

3 II. BACKGROUND

4 This case arises out of Ms. French's employment with divisions of the DOH at
5 various periods between 2010 and 2014. (FAC (Dkt. # 18) Ex. 2 at 1.) On June 4, 2015,
6 Ms. French, who is proceeding *pro se* and *in forma pauperis* ("IFP"), filed her first
7 complaint against the DOH. (*See* Compl. (Dkt. # 3); IFP Mot. (Dkt. # 1); Order Granting
8 IFP Status (Dkt. # 2).) Pursuant to Ms. French's request, the court ordered the United
9 States marshal to serve the DOH within 30 days of July 8, 2016. (7/8/16 Order (Dkt.
10 # 13) (citing 28 U.S.C. § 1915(d)).)

11 After the DOH was served, Ms. French filed another action, which the court
12 consolidated with this matter. (10/4/16 Order (Dkt. # 17).) Because Ms. French intended
13 to amend her complaint rather than file a new case, the court construed Ms. French's
14 filing as her amended complaint when it consolidated the two cases. (*Id.*; FAC.) In her
15 amended complaint, Ms. French alleged that the DOH engaged in "[w]histleblower
16 retaliation, sexual harassment[,], and use of disability to do psychological damage."
17 (FAC at 2.) Ms. French asserted a claim under Title VII of the Civil Rights Act of 1964
18 and alleged that this discrimination occurred between about January 1, 2013, and the
19 "present." (*Id.*) Ms. French also contended that she filed an Equal Employment
20

21 ¹ Neither party requested oral argument, and the court finds that oral argument would not
22 be helpful to its consideration of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4) ("Unless
otherwise ordered by the court, all motions will be decided by the court without oral argument.").

1 Opportunity Commission (“EEOC”) charge against the DOH on May 29, 2014, and
2 received a right to sue letter on March 18, 2014.² (*Id.*)

3 On October 31, 2016, the DOH filed a motion for judgment on the pleadings for
4 lack of subject matter jurisdiction and failure to state a claim. (*See* MJOP (Dkt. # 23) at
5 1.) On January 25, 2017, the court dismissed Ms. French’s amended complaint. (1/25/17
6 Order (Dkt. # 32).) The court concluded that Ms. French had failed to meet her burden of
7 establishing the court’s subject matter jurisdiction (*id.* at 7) and to state a claim under
8 federal and state law (*id.* at 8).³ The court nevertheless granted Ms. French leave to
9 amend and ordered her to file a second amended complaint, if any, no later than 14 days
10 after the entry of the court’s order—February 8, 2017. (*Id.* at 8-9.) In light of Ms.
11 French’s difficulty following the applicable rules and the court’s orders, the court
12 instructed Ms. French to “carefully consider the deficiencies” in her amended complaint
13 and that the court would “interpret a failure to cure those deficiencies as an indication
14 that further amendment would be futile.” (*Id.* at 8.) The court also instructed Ms. French
15 that any amended complaint she filed would supersede her earlier complaints and that she
16 could not rely solely on exhibits to construct a cognizable claim. (*Id.* at 9.) Finally, the
17 court cautioned Ms. French that it would not “entertain further requests for favorable
18

19 ² The date on which Ms. French alleges that she received the right to sue letter appears to
20 be a scrivener’s error.

21 ³ Ms. French’s first amended complaint also named “WFSE/AFSCME” and “FDA Center
22 for Veterinary Medicine” as defendants. (*See* FAC at 1.) The court concluded that its January
25, 2017, order applied with equal force to “WFSE/AFSCME” and “FDA Center for Veterinary
Medicine” and dismissed Ms. French’s complaint against them for failure to state a claim.
(1/25/17 Order at 3 n.3.)

1 treatment” and instructed Ms. French to comply with all applicable Federal Rules of Civil
2 Procedure and the Local Civil Rules for the Western District of Washington. (*Id.*)

3 Ms. French’s deadline for filing a second amended complaint passed on February
4 8, 2017, and Ms. French had filed nothing further in this matter. (*See generally* Dkt.;
5 2/13/17 Order.) Accordingly, on February 13, 2017, the court dismissed Ms. French’s
6 case with prejudice and entered judgment. (2/13/17 Order; Judgment.)

7 Several days later, Ms. French alerted the court that she had attempted to file a
8 second amended complaint on February 9, 2017, one day after the deadline the court
9 imposed. (*See* MFR.) However, Ms. French had again inadvertently opened a new case
10 instead of filing a second amended complaint in this matter. (*See id.*) Ms. French then
11 filed two letters with the court in which she explained her mistake and petitioned the
12 court to keep this case open. (*See id.*)

13 After Ms. French’s first letter was docketed in both matters, the Honorable
14 Richard A. Jones transferred Ms. French’s newly opened case—Case No. C17-0210—to
15 the undersigned judge as related to Ms. French’s earlier case—Case No. C15-0859.
16 *French v. Wash. State Dep’t of Health*, No. C17-0210JLR, Dkt. # 5 (W.D. Wash.). The
17 court consolidated Ms. French’s new case with this matter and construed Ms. French’s
18 letters as a motion for reconsideration of the court’s February 13, 2017, order of dismissal
19 and judgment. (3/2/17 Order (Dkt. # 37) at 4-6.) The court stated that Ms. French
20 appeared to raise a new fact that she could not have reasonably brought to the court’s
21 attention earlier—that her intended second amended complaint was not placed on the
22 docket in this matter prior to the court entering its order of dismissal and judgment. (*Id.*)

1 at 5-6.) The court ordered the DOH to respond to Ms. French's motion for
 2 reconsideration. (*Id.*; *see also* MFR Resp.); Local Rules W.D. Wash. LCR 7(h)(3).

3 The court now addresses Ms. French's motion for reconsideration and the DOH's
 4 response.

5 **III. ANALYSIS**

6 Ms. French asks the court to reconsider its order of dismissal and reopen
 7 this case. (*See* MFR.) The DOH opposes Ms. French's motion to reconsider because
 8 even though Ms. French's "error in properly filing her amended complaint and inability
 9 to notify the court of her error prior to entry of the [o]rder of [d]ismissal may constitute
 10 new facts," Ms. French's "failure to offer [an] excuse or justification for her untimely
 11 filing in the first instance" does not merit the court's reconsideration. (MFR Resp. at 2.)
 12 The DOH also argues that the court should not grant Ms. French relief under Federal
 13 Rule of Civil Procedure 60 because Ms. French presents no new allegations or evidence
 14 supporting such relief. (*Id.* at 3.) Finally, the DOH argues that "the net effect of granting
 15 [Ms. French's motion for] reconsideration . . . is to allow [her] to proceed under her
 16 second amended complaint," and that her intended second amended complaint merely
 17 "repackag[es] . . . the claims and facts she had pleaded twice before." (*Id.* at 4.)

18 **A. Legal Standard**

19 "Motions for reconsideration are disfavored." Local Rules W.D. Wash. LCR
 20 7(h)(1). The court may grant such a motion if the moving party demonstrates (1) "a
 21 showing of manifest error in the prior ruling," or (2) "a showing of new facts or legal

22 //

1 authority which could not have been brought to the [court's] attention earlier with
2 reasonable diligence.”⁴ *Id.*

3 **B. Motion to Reconsider**

4 The court concludes that Ms. French has demonstrated a new fact—that she
5 attempted to file an amended complaint before the court’s dismissal order—that she
6 could not have brought to the court’s attention earlier with reasonable diligence.⁵ (*See*
7 *MFR.*) This new fact warrants the court’s reconsideration. Had the court known that Ms.
8 French attempted to file a second amended complaint but inadvertently opened a new
9 matter, the court would not have dismissed Ms. French’s case and entered judgment on
10 February 13, 2017, in light of the Ninth Circuit’s instruction that “courts are to make
11 reasonable allowances for *pro se* litigants.” *McCabe v. Arave*, 827 F.2d 634, 639-40 (9th
12 Cir. 1987).

13 The court finds little prejudice to the DOH from granting Ms. French’s motion for
14 reconsideration. Although Ms. French filed her second amended complaint one day late
15 (*see MFR*), the court discerns no significant prejudice to the DOH from allowing Ms.
16 French’s second amended complaint to be filed on the docket, (*see generally MFR*
17 *Resp.*); *Bee, Denning, Inc. v. Capital All. Grp.*, 310 F.R.D. 614, 622 (S.D. Cal. 2015)

18 ⁴ Because the court grants Ms. French’s motion to reconsider pursuant to Local Civil
19 Rule 7(h), , the court declines to address Federal Rule of Civil Procedure 60’s standard for relief
20 from a judgment. *See* Fed. R. Civ. P. 60; (*MFR Resp.* at 2-4.) However, even if the court were
21 to consider Ms. French’s motion under Rule 60, the court could reasonably find that the court
should grant relief from its February 13, 2017, judgment due to mistake or inadvertence. Fed. R.
Civ. P. 60(b)(1).

22 ⁵ The DOH does not dispute that Ms. French’s mistake “may constitute new facts.”
(*MFR Resp.* at 2.)

1 (“Although the Court does not condone untimely filings, and will not hesitate to strike
2 filings as untimely when circumstances warrant, the Court finds that in this case
3 Defendants suffered no prejudice due to Plaintiffs’ tardiness.”); *Torbov v. Cenlar Agency,*
4 *Inc.*, No. 14-cv-00130-BLF, 2015 WL 1940301, at *2 (N.D. Cal. Apr. 29, 2015)
5 (considering an opposition filed two months after the deadline where there was no
6 prejudice to the moving parties and “in light of the strong policy favoring resolution of
7 cases on their merits”). Indeed, the DOH’s own response indicates that the DOH will
8 suffer little prejudice from being required to respond to Ms. French’s second amended
9 complaint. (MFR Resp. at 4 (stating that if the court grants reconsideration and vacates
10 its February 13, 2017, order and judgment, the DOH “will draft a[nd] file a motion to
11 dismiss on the same grounds the court has already considered”).) Further, a fuller record
12 will assist the court in determining whether the second amended complaint fails to
13 remedy the deficiencies the court noted in its January 25, 2017, order. (*See id.*)

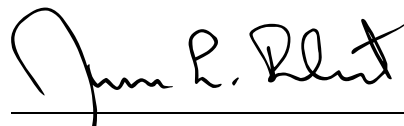
14 Nevertheless, the court once again instructs Ms. French that although she is
15 proceeding *pro se*, she must comply with all applicable rules, including the timely filing
16 of documents on the court’s docket. (*See* 12/2/16 Order (Dkt. # 30) at 1-2; 1/25/17 Order
17 at 8); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
18 same rules of procedure that govern other litigants.”), *overruled on other grounds by*
19 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927-28 (9th Cir. 2012). Accordingly, the court
20 again directs Ms. French to consult the Federal Rules of Civil Procedure and Local Civil
21 Rules for the Western District of Washington, specifically Local Civil Rule 7, which
22 addresses the deadlines by which a litigant must respond to pending motions. *See* Local

1 Rules W.D. Wash. LCR 7. Ms. French can also locate on the Western District of
2 Washington's website materials that assist *pro se* litigants. *See Representing Yourself*
3 (*"Pro Se"*), W. DIST. OF WASH., [http://www.wawd.uscourts.gov/representingyourself-](http://www.wawd.uscourts.gov/representingyourself-pro-se)
4 [pro-se](http://www.wawd.uscourts.gov/representingyourself-pro-se); *E-Pro Se*, W. DIST. OF WASH., <http://www.wawd.uscourts.gov/pro-se/e-pro-se>.
5 Finally, the court cautions Ms. French that it will strike from the docket any future
6 untimely filings for which Ms. French cannot show good cause for her failure to comply
7 with applicable deadlines. The court will not consider mistakes of the kind Ms. French
8 has previously made good cause.

9 IV. CONCLUSION

10 For the foregoing reasons, the court GRANTS Ms. French's motion for
11 reconsideration (Dkt. # 35) and VACATES its February 13, 2017, order of dismissal
12 (Dkt. # 33) and judgment (Dkt. # 34). The court DIRECTS the Clerk to docket Ms.
13 French's February 9, 2017, complaint (Dkt. # 36) as her second amended complaint.

14 Dated this 27th day of March, 2017.

15
16 

17 JAMES L. ROBART
18 United States District Judge
19
20
21
22